

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION**

**NELSON MBONY,
IMMACULATE MBONY,**

**Chapter 7
Case No.: 23-40795-CJP**

Debtors

**TRUSTEE'S OBJECTION TO DEBTORS' HOMESTEAD
EXEMPTION IN DELAWARE REAL ESTATE**

NOW COMES Steven Weiss, Trustee, through his counsel and, pursuant to Federal Rule of Bankruptcy Procedure 4003(b) hereby objects to the Debtors' claimed homestead exemption in real estate located at 1 Wood Stork Court, Middletown, Delaware, as set forth in more detail below. In support thereof, the Trustee respectfully states as follows:

1. On September 27, 2023 (the "Petition Date") Nelson and Immaculate Mbony (the "Debtors") filed a Chapter 7 petition with this Court.
2. Steven Weiss has been appointed as Chapter 7 Trustee in the case.
3. The matters set forth herein constitute core proceedings, pursuant to 28 U.S.C. §157(b)(2)(B).
4. The meeting of creditors under Bankruptcy Code § 341 was commenced on November 1. It was continued to November 16, and has since been continued to December 12, 2023.
5. The Debtors have elected to take the exemptions allowed under Massachusetts

law.

6. The Debtors reside in property at 60 Kings Field Road, Dracut Massachusetts (the “Dracut Property”), and have claimed a homestead exemption in their residence.

7. The Debtors also own a two-thirds interest in real estate at 1 Wood Stork Court, Middletown, Delaware (the “Delaware Property”), along with Adeline Foryoung who, on information and belief, is Ms. Mbony’s sister. A copy of the deed is annexed hereto as Exhibit “A”.

8. In their schedules the Debtors state that the Delaware Property has a value of \$703,000, and is subject to a mortgage in the amount of \$612,500. However, the Trustee’s investigations have revealed that the amount listed as owed is instead the purchase price, and that the actual mortgage balance is approximately \$327,000.

9. In Schedule “C” to their bankruptcy petition, the Debtors claim an exemption in the Delaware Property in the amount of \$90,500, pursuant to M.G.L. Ch. 188, § 3, i.e., the “declared homestead” exemption under Massachusetts law.

10. The Trustee objects to this exemption for a number of reasons.

11. First, the Debtors have also claimed a homestead exemption in the Dracut Property; under M.G.L. Chapter 188, the debtors cannot claim more than one property as exempt.

12. Second, the Debtors do not live in the Delaware Property, nor do they intend to live there. At the § 341 meeting on November 16, they testified that they intend to remain in the Dracut Property.

13. Third, the Trustee does not believe that the Debtors may claim the “declared homestead exemption in the Delaware Property. The Massachusetts homestead exemption statute does not make any provision for a declared homestead declaration for property located outside the Commonwealth of Massachusetts, and the Trustee contends that such property can not be so exempted.¹ And, in any event, as a practical matter, the Trustee does not believe that any declaration was filed in the appropriate land records in Delaware.

WHEREFORE, pursuant to Federal Rule of Bankruptcy Procedure 4003, and for cause shown, the Trustee respectfully prays:

1. That the Debtors’ claim of exemption in the Delaware Property be denied; and
2. For such further relief as this Court deems just and proper.

Respectfully submitted this 20th day of November, 2023.

STEVEN WEISS,
CHAPTER 7 TRUSTEE

/s/ Steven Weiss
Steven Weis, Esquire
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¹ This Court’s opinion in *In re St. James*, 560 B.R.E. 15 (Bankr. D. Mass. 2016) is easily distinguishable. In that case, the Debtor was claiming an exemption in the “automatic” homestead exemption provided for in Ch. 188, § 4; and asserted that he intended to live in the property located outside Massachusetts.

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CERTIFICATE OF SERVICE

I, Steven Weiss, of Shatz Schwartz and Fentin, P.C., do hereby certify that on November 20, 2023, a copy of the foregoing Trustee's Objection to Debtors Claims of Homestead Exemption in Delaware Property was mailed via electronic and/or first-class mail, postage pre-paid, to the following:

Nelson Mbony
Immaculate Mbony
60 King Street
Dracut, MA 01826

Glenn F. Russell, Jr.
Law Office of Glenn F. Russell, Jr.
38 Rock Street, Suite #12
Fall River, MA 02720

/S/ Steven Weiss
Steven Weiss, Esquire